

TO: THE BOARD

## EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**PRINTING RESEARCH, INC.**  
**and HOWARD W. DEMOORE,**

**Plaintiffs,**

**V.**

**WILLIAMSON PRINTING CORP.,  
BILL L. DAVIS and  
JESSE S. WILLIAMSON,**

**Defendants.**

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**CIVIL ACTION NO. 3-99CV1154-M**



**PLAINTIFFS' RESPONSE TO  
DEFENDANTS' FIRST SET OF INTERROGATORIES**

Plaintiffs, Printing Research, Inc. and Howard W. DeMoore, serve Plaintiffs' Response to Defendants First Set of Interrogatories, objecting to and answering Defendants' First Set of Interrogatories ("First Interrogatories") as follows:

## I. GENERAL OBJECTIONS

Plaintiffs voice the following general objections to the requests, instructions and definitions contained in the First Interrogatories.

### A. General Objections to Requests

1. Plaintiffs object that the scope of the interrogatories is vague, unreasonable, over broad and unduly burdensome whenever they request that Plaintiffs provide "all" facts, state "all facts in detail," or identify "all" persons. Such interrogatories are so general and loose as to be meaningless. Plaintiffs may not know "all" facts or details at this time. Further, the fact that one plaintiff is a corporation and arguably may be said to "know" what any one of its officers knows complicates the issue because, in a manner of speaking, Plaintiffs may not know all that they

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know. It is unreasonable to expect Plaintiffs to offer sworn verification that any representations cover "all" facts "in detail" or to "identify all persons" having knowledge "including the facts known to each of them." The only way to completely and literally answer such interrogatories would be for Plaintiffs to conduct exhaustive depositions of their own employees, associates and other witnesses and then produce transcripts of those depositions to Defendants—clearly an unreasonable, unduly burdensome, and effectively unenforceable request. *See, e.g., Stovall v. Gulf and South American Steamship Co.*, 30 F.R.D. 152, 154 (S.D. Tex. 1961) ("How can the court make enforceable orders with reference to 'all' of anything?"). Plaintiffs also object to such interrogatories to the extent that they duplicate other discovery requests or may be more reasonably addressed through other modes of discovery.

2. Plaintiffs object to every interrogatory in so far as it invades the trade secret privilege, the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege or exemption.

3. Plaintiffs object to each interrogatory or portion thereof that involves an opinion or contention that relates to fact or the application of law to fact in so far as that interrogatory may be premature and better answered after designated discovery. *See* Fed R. Civ. P. 33(c).

4. Plaintiffs object to any instruction, definition, request or other device that attempts to expand Plaintiffs' discovery burden beyond that defined in Rules 26 and 33 of the Federal Rules of Civil Procedure.

**B. General Objections to General Instructions**

5. Plaintiffs object that the instruction to supplement responses within ten days exceeds the scope of the Federal Rules of Civil Procedure. In accordance with the Federal Rules of Civil Procedure, Plaintiffs will timely amend or supplement as practicable.

6. Plaintiffs object that the instruction to state what portions of the interrogatory Plaintiffs are unable to answer exceeds the requirements of the Federal Rules of Civil Procedure and may be unduly burdensome.

7. Plaintiffs object that the instructions regarding "identify, identity, and indentification" are unduly burdensome and seek information that may be duplicative of other discovery requests.

8. Plaintiffs object to the instruction in paragraph E on page 2 of the First Interrogatories in so far as compliance with the literal terms of the instruction may reveal the contents of privileged documents or communications. Plaintiffs further object that description of withheld items in more detail than that required by the Federal Rules of Civil Procedure is unduly burdensome. Documents, communications, or things withheld on the basis of privilege or as trial preparation material will be identified in a manner sufficient to comply with Rule 26(b)(5) (Claims of Privilege or Protection of Trial Preparation Materials).

9. Plaintiffs object that the instruction regarding Plaintiffs' election, if any, of Rule 33(d) procedures attempts to expand Plaintiffs obligations beyond the requirements of that rule. See Fed. R. Civ. P. 33 (d). Rule 33(d) does not require that Plaintiffs specify the source, author, recipients or date of preparation of documents. *Id.*

### C. General Objections To Definitions

10. Plaintiffs object to the definition of "PRI" as unduly burdensome in scope and potentially embracing persons over whom no party to this action has control. Because the definitions of "Plaintiffs," "you" and "yours" are defined to embrace the definition of PRI, they are similarly defective.

11. Plaintiffs object to the definition of "DeMoore" as unduly burdensome in scope and potentially embracing persons over whom no party to this action has control. Because the definitions of "Plaintiffs," "you" and "yours" are defined to embrace the definition of DeMoore, they are similarly defective.

12. Plaintiffs object to any attempt to broaden the definition of "document" beyond the scope of Rule 34(a) or to circumvent the protection of privileges by broadening that definition. As one example, Plaintiffs will not produce "opinions of counsel" protected by the attorney-client privilege.

## **II. Objections and Responses to Interrogatories**

### **INTERROGATORY NO. 1:**

State in detail all of the facts and circumstances that you believe support your claim that DeMoore is the sole inventor of the claimed invention of the '363 patent, including, but not limited to, the date on which, and place where, DeMoore first conceived such invention, and identify all persons known to you having knowledge of such facts and circumstances, including the facts and circumstances known to each of such persons.

**RESPONSE:**

Plaintiffs object that the interrogatory is over broad, unduly burdensome and duplicative. Subject to and without waiver of these and the general objections, Plaintiffs respond as follows.

By or about December 31, 1994, and perhaps earlier, Howard DeMoore had conceived of the invention. Prior to this, between about October 25, 1994 and November 25, 1994, Howard DeMoore asked PRI employee Ronald Rendleman if he could make a flexo coater work between towers 1 & 2 on our in-house Heidelberg press. Rendleman presented a rough draft print to Howard DeMoore on or about December 31, 1994 for an interstation coater of the type to be used on a press of the same type as the Williamson LYL press. On that date, Rendleman made a drawing of same.

In addition to the dates described in Plaintiffs' Original Complaint, the following dates relate to conception:

- Between about October 28, 1994 and December 1994, PRI employees believed to be Steve Garner and John Bird took a PRI flexographically printed sampler over to show Jesse Williamson at Williamson Printing Corporation. Jesse Williamson exhibited interest in the concept. PRI already had IR dryers that are needed for the Lithoflex® process installed at Williamson Printing Corporation on one of their new Heidelberg multi-color presses.
- Between about October 28, 1994 and December 1994, Jesse Williamson agreed to test demonstration to be done in PRI's shop to investigate the Lithoflex® process. The test was delayed until late December.
- On or about December 15, 1994, Bill Davis faxed a list of materials to be tested to John Bird.
- On or about December 16, 1994 PRI's Rendleman generated a drawing for an interstation flexographic coater using an inclined slide concept.
- On or about December 20, 21, and/or 22, 1994, PRI ran tests on PRI's in-house press.

- On or about December 27, 1994, PRI reduced to drawing the concept for an "HRC" coater.
- On or about December 30, 1994, PRI's Rendleman produced a drawing of an HRC coater on a Heidelberg press.
- On or about January 25, 1995, PRI's Steve Baker wrote to Jesse Williamson proposing a Super Blue EZB blanket coater for Williamson's Heidelberg 102 CD LYL 6 color 40 inch press with extension and quoted a price.
- On or about January 27, 1995, Rendleman produced a drawing of the plate coater for Williamson's press and a plate and blanket coater also.
- On or about February 11, 1995, Howard DeMoore, Steve Garner, and John Bird met with Jesse Williamson and Bill Davis at Williamson regarding tests on the Heidelberg Speedmaster CD 6 color LYL press to be conducted on or about February 12, 1995.
- At the latest, a patent application relating to the invention was filed May 4, 1995. That application followed disclosures of the complete concept to patent attorney Dennis Griggs. Therefore, conception had to have occurred before May 4, 1995.

While Plaintiffs presently believe that Howard DeMoore is the sole inventor, the case may be made for joint inventorship where, in addition to DeMoore, one or more of the following would be joint inventors: John Bird, Jesse Williamson, and Bill Davis. Terry Britton was PRI's press operator during the December 1994 printing trials at PRI.

To the best of Plaintiffs knowledge, individuals identified above as employees of either corporate party may be contacted at the addresses of their respective employers. Except as follows:

John Bird  
J.B. Machinery, Inc.  
9 Sasqua Trail  
Weston, Connecticut 06883  
(203) 544-0101

Steve Garner  
209 Mill Creek Road  
Arlington, Texas 76010  
(817) 265-8375

Dennis T. Griggs  
Griggs & Johnston, LLP  
Preston Road at LBJ Freeway North Dallas Bank Tower, Suite 1200  
12900 Preston Road, LB-15  
Dallas, Texas 75230-1328  
Telephone: 972-458-2511  
Fax: 972-458-2557  
Email: griggs@connect.net

**INTERROGATORY NO. 2:**

In regard to your alternative claim that DeMoore is a co-inventor of the claimed invention of the '363 patent, (a) state in detail the factual and legal bases that you believe support this claim, (b) identify each co-inventor, including DeMoore, and state in detail the activities and contributions to the claimed invention of the '363 patent, of each co-inventor, and (c) identify all persons known to you having knowledge of the matters inquired about in subparagraphs (a) and (b) hereof, including the facts known to each of such persons.

**RESPONSE:**

Plaintiffs object that the interrogatory is over broad, unduly burdensome and duplicative. Subject to and without waiver of these and the general objections, Plaintiffs respond as follows:

See Response to No. 1, which addresses the possibility of joint inventorship. Specific contributions cannot be identified now. Although Plaintiffs believe that Howard DeMoore is the sole inventor, the parties were working together, and their meetings and communications may have provided cross-pollination of all of the ideas, thus making the inventive contributions entirely joint. In addition to DeMoore, joint inventors from PRI, if any, would include John Bird and Ron Rendleman, and joint inventors from Williamson Printing, if any, would include Jesse Williamson and Bill Davis.



**INTERROGATORY NO. 3:**

State in detail all of the facts and circumstances concerning the first actual reduction to practice of the claimed invention of the '363 patent by DeMoore, PRI or any other person, including the date and location thereof, and identify all persons known to you having knowledge of such facts and circumstances, including the facts known to each of such persons.

**RESPONSE:**

Plaintiffs object that the interrogatory is vague, over broad, unduly burdensome, unreasonable and duplicative. Subject to and without waiver of these and the general objections, Plaintiffs respond as follows.

The first actual reduction to practice may have occurred February 12, 1995. Although any of the earlier tests, deliveries, installations and/or runs by PRI (as described above and in the Original Complaint and dated on or about October 1994, November 15, 1995, and December 6, 1995) may also be regarded as an "actual reduction to practice." At the latest, an actual reduction to practice occurred on December 6, 1995 in Defendants' plant.

It should be noted that as a result of the settlement of an earlier lawsuit between PRI and Williamson, Williamson had agreed to let PRI test out new developments on Williamson's printing equipment. It should be further noted that PRI gave Williamson the first interstation coater free of charge.

**INTERROGATORY NO. 4:**

State in detail all of the facts and circumstances concerning your claim that Defendants derived the claimed invention of the '363 patent from Plaintiffs, and identify all persons known to you having knowledge of such facts and circumstances, including the facts known to each of such persons.

**RESPONSE:**

Plaintiffs object that the interrogatory is over broad, unduly burdensome and duplicative. Subject to and without waiver of these and the general objections, Plaintiffs respond as follows:

Without first contacting PRI and unbeknownst to PRI, Williamson filed a patent application on the Lithoflex® invention in August 1995. This patent application (now U.S. Patent 5,630,363) contains the significant concepts. At least Bill Davis and Jesse Williamson (who are named on the patent application) have knowledge, as well as PRI's Howard DeMoore, Steve Garner, and John Bird. The facts are simply that, through working with PRI, the Defendants learned the significant concepts from PRI and secretly appropriated them for their own use.

**INTERROGATORY NO. 5:**

Identify all persons with whom DeMoore had any communications about the Lithoflex system during the period beginning on January 1, 1994 and ending on May 4, 1995, and state in detail the content of each such communication, including the date thereof.

**RESPONSE:**

Plaintiffs object that the interrogatory is over broad, unduly burdensome, unreasonable, vague, and duplicative. Subject to and without waiver of these and the general objections, Plaintiffs respond as follows.

Howard W. DeMoore undoubtedly talked to a large number of people in over a year and four months concerning aspects of Lithoflex®. These persons are believed to include Steve Garner, Ron Rendleman, Howard Secor, John Bird, each of the Defendants, and Jim Johnson (then of Williamson Printing Corporation).

**INTERROGATORY NO. 6:**

Identify all persons to whom any invention disclosures, written descriptions, drawings or other communications relating to the May 4, 1995 patent application were made or provided prior to the filing of such application, and identify all such invention disclosures, written descriptions, drawings and other communications, including the date thereof.

**RESPONSE:**

Plaintiffs object that the interrogatory is over broad, unduly burdensome, unreasonable, vague, and duplicative. Subject to and without waiver of these and the general objections, Plaintiffs respond as follows.

John Bird, Ron Rendleman, Howard DeMoore, and other PRI employees, patent attorney Dennis Griggs, Defendants Williamson and Davis and other Williamson Printing employees with whom they or PRI's personnel have interfaced.

**INTERROGATORY NO. 7:**

Identify all persons known to you having knowledge of any facts and circumstances on which the allegations in paragraphs 46-50 of the Original Complaint are made or based, and state in detail the facts and circumstances known to each of such persons.

**RESPONSE:**

Plaintiffs object that the interrogatory is over broad, unduly burdensome, unreasonable, vague, and duplicative. Subject to and without waiver of these and the general objections, Plaintiffs respond as follows.

Howard DeMoore, John Bird, Steve Garner, Ron Rendleman, Bill Davis, Jesse Williamson, and probably others have knowledge of certain facts and circumstances alleged in the Original Complaint pertaining to Defendants' conversion of Plaintiffs' property

**INTERROGATORY NO. 8:**

Identify all persons known to you having knowledge of any facts and circumstances on which the allegations in paragraphs 52-58 of the Original Complaint are made or based, and state in detail the facts and circumstances known to each of such persons.

**RESPONSE:**

Plaintiffs object that the interrogatory is over broad, unduly burdensome, unreasonable, vague, and duplicative. Subject to and without waiver of these and the general objections, Plaintiffs respond as follows.

Jim Rasmussen was the primary contact with Hallmark and has knowledge of facts surrounding the Hallmark contract:

Jim Rasmussen  
Hallmark Card, Inc.  
Advancing Technologies Div. - MD 233  
Technical Innovation and Development  
P.O. Box 419580  
Kansas City, MO 64141-6580  
(816) 274-3898  
FAX (816) 274-7367

Dave Douglas, Howard DeMoore, Steve Garner, and Ron Rendleman also have knowledge of the facts alleged in the Original Complaint pertaining to Defendants' tortious interference.

**INTERROGATORY NO. 9:**

In regard to the allegations of paragraphs 60-63 of the Original Complaint, (a) identify all persons having knowledge of facts relating to or evidencing such allegations, including the facts known to each of such persons, (b) identify the agreement or contract referred to in such allegations and, if it was oral, state in detail all of the facts and circumstances surrounding such

oral agreement or contract, and (c) state in detail the factual and legal bases that you believe support your allegation that WPC was in a position of trust and confidence with PRI

**RESPONSE:**

Plaintiffs object that the interrogatory is over broad, unduly burdensome, unreasonable, vague, and duplicative. Subject to and without waiver of these and the general objections, Plaintiffs respond as follows.

All persons named in the Original Complaint are aware that PRI and DeMoore have a reputation for developing innovative equipment and supplies for the printing industry. All persons named in the Original Complaint are aware that such innovations are potentially lucrative and, as such, are not given away to potential customers, competitors, or the general public. All persons named in the Original Complaint are aware that when such innovations as are at issue here are shown to a prospective customer and identified as innovations, new developments, or developmental products there is an implied agreement or contract of confidentiality. All persons named in the Original Complaint are aware that some innovations are so obviously innovations that they need not be identified as such for professionals in the printing industry to understand that their disclosure is pursuant to an implied agreement or contract to maintain confidentiality of the innovative processes, equipment, or supplies disclosed. However, there was an oral understanding that the Lithoflex® process and specific details of the process and equipment were to be kept secret. PRI and Williamson Printing were supposed to be "partnering" on the development of this process and equipment; i.e., this was more than just a simple commercial transaction.

**INTERROGATORY NO. 10:**

Identify all persons who conceived, designed and developed PRI's retractable printer/coater, including a description of the activities performed by each such person.

**RESPONSE:**

Plaintiffs object that the interrogatory is over broad, unduly burdensome and duplicative. Subject to and without waiver of these and the general objections, Plaintiffs respond as follows

See the Original Complaint and Response to Interrogatory No. 1.

**INTERROGATORY NO. 11:**

In regard to Plaintiffs' allegations in the Original Complaint that it has been damaged by the alleged acts of Defendants, (a) list and describe separately each such element of damage, (b) state the monetary amount of each such element of damage and describe how each such amount was calculated or determined, and (c) identify all persons having knowledge of such damages and how such amounts were calculated or determined.

**RESPONSE:**

Plaintiffs object that the interrogatory is over broad, unduly burdensome and duplicative. Additionally, Plaintiffs object that the interrogatory requests information that requires Plaintiff to speculate as to, for example, future damages as well as past and present damages that are necessarily speculative, though nonetheless real and actual. Plaintiffs further object that this interrogatory may be premature and best answered after further discovery. Finally, Plaintiffs object that Defendants themselves may be able to answer the interrogatory in that Defendants are in a better position to state what profits they have made to date off the invention. Subject to and without waiver of these and the general objections, Plaintiffs respond as follows.

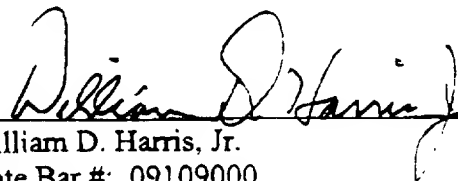
Plaintiffs know that they were damaged by loss of the Hallmark contract cited in the Original Complaint. That single contract had a stated dollar value of at least \$130,000.00.

Further, Hallmark has many, many printing locations nationwide, and Plaintiffs reasonably believe that some portion, if not all, of those locations may also have contracted for the system developed by Plaintiffs. Plaintiffs believe that at least two or three additional Lithoflex® coaters would likely have been sold to Hallmark or its designees. In addition the sales of the Lithoflex® coaters would have included ancillary dryers and peripheral equipment. As to the open market, Plaintiffs do not know their damages because Plaintiffs have been afraid to market the invention for fear of liability to WPI.

Plaintiffs consider Defendants' profits to date from exploitation of the invention to be one partial measure of damages.

Plaintiffs have also lost the valuable services of longtime PRI executive Steve Garner who was unable to sell coaters because of Williamson's unlawful activities.

Respectfully submitted,



William D. Harris, Jr.

State Bar #: 09109000

L. Dan Tucker

State Bar #: 20276500

Robert T. Mowrey

State Bar #: 14607500

LOCKE LIDDELL & SAPP LLP

2200 Ross Avenue, Suite 2200

Dallas, Texas 75201-6776

ATTORNEYS FOR PLAINTIFFS

VERIFICATION

STATE OF TEXAS       §  
                                   §  
 COUNTY OF DALLAS   §

BEFORE ME, the undersigned authority, on this day personally appeared Dave Douglas who is personally known to me. After I administered an oath to him, he swore upon his oath as follows

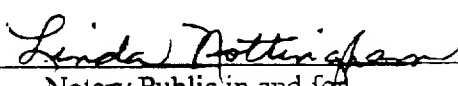
1. My name is Dave Douglas. I am over the age of twenty-one (21) years, competent to make this affidavit, and have personal knowledge of the matters set for the below.

2. I am a vice president of Printing Research, Inc. I am authorized to make this affidavit on behalf of Printing Research, Inc. I have read the foregoing answers in "Plaintiffs' Response to Defendants First Set of Interrogatories." A reasonably diligent investigation has been made to compile information with which to answer these interrogatories, and the information set forth in the foregoing answers constitutes the best information available to Printing Research, Inc. Based on the information currently available after reasonable investigation, these answers are true and correct.

3. Answers explicitly stating my personal knowledge or that I have personal knowledge of facts are within my personal knowledge and are true and correct.

  
 Dave Douglas

SUBSCRIBED AND SWORN TO before me, the undersigned authority, this 19<sup>th</sup> day of April 2000.

  
 Notary Public in and for  
 The State of Texas

My Commission expires:

4/21/00

LINDA NOTTINGHAM  
 [Printed Name of Notary]

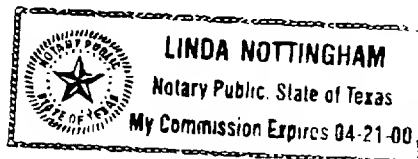






EXHIBIT B

## EXHIBIT B



Email: [jpinkerton@worsham.net](mailto:jpinkerton@worsham.net)

**William D. Harris, Jr., Esq.**  
**Locke Liddell & Sapp LLP**  
**2200 Ross Avenue, Suite 2200**  
**Dallas, Texas 75201-6776**

Dear Bill:

As you can see, I made most of the changes you recommended. However, I did not make your suggested changes to subparagraph 3(f), paragraph 12, the last line of paragraph 13 or the first two lines of paragraph 14 because I did not think they were appropriate or needed. If you would like to discuss these provisions further, please let me know.

Also, as I was revising my draft, I realized that it may be necessary for both of us to disclose confidential information produced by an adverse party to the patent office in connection with patent office proceedings involving the parties, including the reissue application. Furthermore, since Bobby Falk is representing Bill Davis, Jesse Williamson and Williamson Printing in the reissue proceeding, it is also necessary to add him as a person authorized to receive confidential information. Accordingly, I added Falk as a Qualified Person in paragraph 3(g) and modified paragraph 7 to permit use of confidential information in connection with any patent office proceedings involving any of the parties. I also added a new paragraph 16 to provide procedures for providing confidential information to the patent office.

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William D. Harris, Jr., Esq.

April 5, 2000

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After reviewing this revised draft, please call me to discuss it. If you have additional changes, it would probably expedite matters at this time, if you would call me to discuss them or fax me pages with you changes marked thereon, rather than you preparing another redraft.

Very truly yours,



John P. Pinkerton

JPP:tsmc

Enclosure(s)

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techniques, processes, trade secrets, formulae, research and development information, customer lists, sales and cost information and pricing information, information that a party has treated as confidential and has not publicly disclosed and any other information that would qualify as confidential pursuant to Rule 26(c)(7) of the Federal Rules of Civil Procedure.

2. The term "document" as used in this Order shall mean and include any and all written and graphic matter, however produced or reproduced, of any kind and description, including but not limited to all communications, correspondence, letters, telegrams, notes, memoranda of meetings, reports, directives, intracompany communications, documents, diaries, logs, contracts, licenses, ledgers, books of account, vouchers, checks, invoices, charge slips, receipts, freight bills, working papers, desk calendars, appointment books, maps, plats, engineering studies, drawings, photographs, and writings of every kind or description, tape recordings, computer printouts, computer programs, magnetic cards, microfilm, microfiches, or other electronic or mechanical information or data of any kind or description, including both original and copies.

3. "Qualified Person" as used in this Order means:

(a) Attorneys of record and attorneys designated as of counsel in this litigation who have executed this Order, and employees of such attorneys to whom it is necessary that the material be shown for purposes of this litigation; provided that execution of this Order by any member of a law firm representing a party shall constitute a representation that all persons in or employed by that firm that have viewed Confidential Information shall observe this Order;

(b) Plaintiff Howard W. DeMoore and Defendants Bill L. Davis and Jesse S. Williamson;

(c) No more than five (5) employees of Plaintiff Printing Research, Inc. and no more than five (5) employees of Defendant Williamson Printing Corporation to whom it is necessary that the material be shown for purposes of this litigation, provided that each such person has executed an acknowledgment in the form attached hereto as Exhibit A, which executed form shall be served on all parties. Additional employees of Printing Research, Inc. and Williamson Printing Corporation may be added as Qualified Persons hereunder by consent of the parties, which consent shall not be unreasonably withheld. The party desiring to add additional employees shall make a written request to the other parties identifying the employees and the reasons they need to be included, and the other parties shall respond in writing to such request within three (3) days of receipt thereof;

(d) Independent experts or consultants, who are not present or past employees of any party, such as technical and legal experts, who are qualified for access as provided in paragraph 4 hereof, and whose advise and consultation are being or will be used by a party in connection with the preparation for trial of this litigation, or in connection with any motions in this litigation, and their paralegal, secretarial and clerical employees to whom it is necessary that the material be shown for purposes of this litigation;

(e) An outside certified public accounting firm retained by a party to provide assistance in this litigation and the employees of such firm to whom it is necessary that the material be shown for purposes of this litigation, provided that the accountants in such firm who

will have access to Confidential Information have executed an acknowledgment in the form attached hereto as Exhibit B, which executed form shall be served on all parties;

(f) Personnel of graphics or litigation support firms engaged by the parties or their attorneys to produce litigation exhibits and trial preparation media, provided such personnel have executed an acknowledgment in the form attached hereto as Exhibit A, which executed form shall be served on all parties;

(g) Robert Hardy Falk of the firm of Falk & Fish, l.l.p., provided that he has executed an acknowledgment in the form attached hereto as Exhibit A, which executed form shall be served on all parties;

(h) Personnel of the court and court reporters retained by the parties or the court to record and transcribe testimony in this case; and,

(i) Any other person agreed to in writing by the parties or designated as a Qualified Person by order of this Court, after notice to all parties.

4. The disclosure of or access to Confidential Information to or by any independent experts or consultants as provided for in paragraph 3(d) hereof shall be only on the following conditions. The party seeking to have such expert or consultant qualified for access shall provide each other party a current curriculum vitae for such expert or consultant and signed acknowledgment in the form of Exhibit B hereto. Opposing counsel shall have five (5) days after receipt of the curriculum vitae and signed acknowledgment in which to make an appropriate application to the Court requesting that access to such information be denied to that expert or consultant. No Confidential Information shall be disclosed to such expert or consultant until the expiration of the five (5) days for the opposing party to make an application to the Court or, if



such an application is made, until resolution of the application by agreement of the parties or order of the Court.

5. Any party may designate the documents, information, or portions thereof which the party considers to be appropriate for designation as Confidential Information at the time such documents, information or portions are produced or disclosed, or as soon thereafter as the person or entity seeking protection becomes aware of the nature of the documents, information or portions disclosed and sought to be protected hereunder, by the following procedure:

(a) In the case of documents produced for inspection pursuant to request or subpoena that are to be designated as Confidential Information, the party producing the documents sought to be protected shall notify the inspecting party that some of the information to be produced is to be deemed Confidential. All documents produced for inspection at a production for which such notice has been given shall be inspected only by persons qualified to have access to Confidential Information.

(b) In the case of documents which the inspecting party requests to be copied after the document inspection, the producing party may designate specific documents containing information to be protected by marking the copy of the document claimed to contain such information as "CONFIDENTIAL" or "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER" (hereinafter referred to as "the Notice") and by marking the actual pages thereof claimed to contain Confidential Information with the Notice. Copies delivered without such warning shall be deemed nonconfidential; provided, however, that paragraph 12 shall apply as a curative provision for inadvertent omission of the Notice.

Where an entire document has been designated Confidential Information, the producing party shall, upon written request by any other party, specifically identify the portions of the document that are Confidential Information and the portions that are not Confidential Information. The requesting party may then redact the confidential portions and use the redacted document as if it were not designated as Confidential Information, but only after first checking the redacted document with the producing party to ensure that all Confidential Information has, in fact, been redacted.

(c) In the case of copies of documents provided by the producing party in lieu of producing the documents for inspection, the producing party may designate specific documents containing information to be protected by marking those pages of the copy claimed to contain such information with the Notice. Copies provided without the Notice shall thereafter be deemed nonconfidential, unless and until such time as those copies or portions thereof are designated as Confidential Information pursuant to paragraph 12.

(d) In the case of documents or copies thereof containing Confidential Information, but which are not designated confidential as a whole, such documents or copies thereof shall be subject to the terms of this Order only with respect to the specific portions thereof marked with the Notice.

(e) In the case of deposition testimony, any counsel of record or counsel of a nonparty who is present at the deposition may invoke the provisions of this Order by stating on the record that testimony being given, about to be given, or just given is deemed Confidential Information. The deposition reporter shall mark the portions of the transcript in which testimony was designated as Confidential Information with the notation "CONFIDENTIAL - SUBJECT TO

PROTECTIVE ORDER" Additionally, the reporter shall mark the cover and title page of any transcript containing Confidential Information with the notation "PORTIONS OF THIS TRANSCRIPT ARE CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER." The provisions of this paragraph may be invoked for the witness's entire deposition upon the commencement thereof, in which case the deponent's counsel shall, within fifteen (15) days after the transcript has been prepared, designate each page containing Confidential Information and notify all counsel in writing of such designation. The disclosing party shall have the right to exclude from attendance at a deposition, during such time as Confidential Information is to be disclosed, any person who is not entitled to have access to such information.

(f) In the case of responses to interrogatories and requests to admit, the Notice shall be placed next to each response containing Confidential Information, and the first page of the response shall also display the Notice.

6. A party may also designate as Confidential Information any document originating with that party produced through third-party discovery. If the document is produced at the deposition of a third-party witness, the claim of confidentiality shall be asserted on the record at the deposition to permit the foundation of that claim to be examined at that time. The party shall also have the right to designate as Confidential Information, pursuant to the procedure specified in paragraph 5 above, any testimony that discloses the contents of such documents. If the document is produced other than in conjunction with a deposition, the originating party may designate the document as Confidential Information pursuant to the procedure specified in paragraph 5.

7. All Confidential Information produced or exchanged in the course of this litigation shall be used solely for the purposes of this litigation and any proceedings in the United States Patent and Trademark Office involving any of the parties, including, but not limited to, the proceedings involving reissue application serial number 09/315,796, and not for any business, competitive or commercial purpose or function.

8. Confidential Information shall not be made available to persons other than Qualified Persons, the party who produced the Confidential Information, or any person or party who is the proprietor or source of the Confidential Information or who received the Confidential Information prior to entry of this Order. Confidential Information produced or supplied by a company, corporation or other business entity may be used at any deposition of a current or former employee of such producing or supplying company, corporation or entity. Confidential Information shall be stored and handled in a manner and location reasonably calculated to prevent access by or inadvertent disclosure to persons other than Qualified Persons.

9. Any summary or copy of any designated Confidential Information shall be subject to the terms of this Order to the same extent as the information or document from which such summary or copy is made.

10. Nothing in this Order shall bar or otherwise restrict any attorney from rendering advice to his client with respect to this litigation and, in the course of rendering advice, referring to or relying generally on his examination of Confidential Information produced or exchanged; provided, however, that in rendering such advice and in otherwise communicating with his client, the attorney shall not disclose the contents of any Confidential Information produced by another party if that disclosure would be contrary to the terms of this Order.

EXHIBIT C

## EXHIBIT C

# LOCKE LIDDELL & SAPP LLP

ATTORNEYS & COUNSELORS

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April 21, 2000

## VIA HAND DELIVERY

John P. Pinkerton  
Worsham Forsythe Wooldridge LLP  
Energy Plaza, 30<sup>th</sup> Floor  
1601 Bryan Street  
Dallas, Texas 75201



Re: *Printing Research, Inc., et al. v. Williamson Printing Corporation, et al.*  
Civil Action No. 3:99-CV-1154-M

Dear John:

Please find enclosed Plaintiffs' current proposal for a protective order in this case.

We have adopted much of Defendants' most recent proposal; however, there are some serious sticking points, particularly with Defendants' proposed changes that would allow the use of confidential documents before the Patent and Trademark Office.

Rather than another redline, allow me to comment, paragraph by paragraph, on Defendants' draft that you forwarded to me on April 5, 2000 so that you may compare Plaintiffs' proposal with a perspective on the reasoning underlying it.

Plaintiffs accept the version of paragraphs 3(d) and 3(f) that Defendants proposed.

Defendants proposed a paragraph 3(g) apparently designed to account for Defendants' intent to hire co-counsel. Plaintiffs propose modifying that paragraph to allow Plaintiffs to add co-counsel under the same provisions.

Plaintiffs accept the version of paragraphs 5(b) and 5(c) that you proposed.

Plaintiffs cannot accept the revisions to paragraph 7 that would allow Defendants to use Plaintiffs' Confidential Information before the Patent and Trademark Office. Further, Plaintiffs will not agree to such similar language as appears in paragraph 16 and in Exhibits A and B. Plaintiffs strike that language for at least the three following reasons.

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First, the issuance and reaffirmation or confirmation of a patent confers a competitive and commercial advantage on the patent holder; therefore, using these documents before the PTO is use for a "business, competitive, or commercial purpose," which is exactly what the Protective Order is designed to prevent. Accordingly, adding this language is contradictory to both the word and the spirit of the Protective Order.

Second, a significant purpose of patent law is to open innovations and inventions to the public by allowing the inventor a limited period of exclusive use. Thus, the underlying philosophy of the patent office is (and should be) free access to information. Accordingly, there can hardly be a better way to assure that Confidential Information will become public knowledge than to use it before the PTO. Again, this is contrary to the purpose of the Protective Order.

Third, in basic terms, Plaintiffs have accused Defendants of stealing Plaintiffs' idea. Now Defendants propose that Plaintiffs should agree to allow Defendants to use Plaintiffs' documents to defend that theft before the PTO. Plaintiffs consider such a proposal to be ill founded and without logical or equitable support. Presently, Plaintiffs consider this point non-negotiable.

As to paragraph 12, Plaintiffs would like to include language providing for the immediate return of inadvertently disclosed attorney client and work product documents. The proposed language is shown in the attached draft.

As to paragraph 13, Plaintiffs believe that the burden for the use of Confidential Information should be placed on the party that wants to use it without permission. In Defendants' version of paragraph 13, the non-disclosing party could freely use the disclosing party's Confidential Information until the disclosing party could establish its confidentiality. Such a provision undermines the purpose of a protective order, which is to encourage full production by assuring the confidentiality of the information produced. Accordingly, the non-disclosing party that wants to use Confidential Information as though it were not confidential should bear the burden of proving that the information is not, in fact, confidential.

Plaintiffs' proposal allows the non-disclosing party to bear its burden by offering positive evidence that the information is already in the public domain. That would be a finite proof. On the other hand, Defendants' proposal implies a burden of providing negative evidence, that is, proving that the information is not in the public domain. That, potentially, would be an infinite proof, and, therefore, impractical.

Accordingly, Plaintiffs request that Defendants adopt Plaintiffs' version of paragraph 13.

As to paragraph 15, Plaintiffs believe that including a fuller confidentiality disclosure on second copies of pleadings delivered to the Court will offer better protection and pose no additional burden of any consequence.

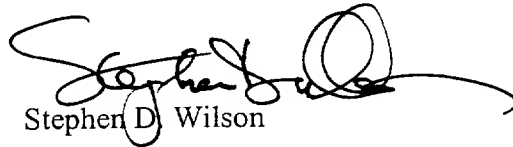
John P. Pinkerton  
April 21, 2000  
Page 3

As to paragraph 16 and Exhibits A and B, please see the discussion above regarding paragraph 7.

Please consider the following additional concerns regarding Exhibits A and B. Defendants dropped sub-paragraph 7 from Exhibit B in their last proposal, whereas Plaintiffs believe that the provision offered valuable protections to all parties. Plaintiffs have a substantial preference for keeping the language; however, the point is open for discussion. Finally, Plaintiffs prefer that the language in Exhibits A and B regarding the Court's enforcement jurisdiction explicitly name the Court and acknowledge that the signatory understands that violation of the Protective Order may be punishable as contempt.

I look forward to resolving these issues so that the parties may move forward with discovery.

Sincerely,

  
Stephen D. Wilson

Encl.

003107-0001



**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**PRINTING RESEARCH, INC.  
and HOWARD W. DEMOORE,**

**Plaintiffs,**

**v.**

**WILLIAMSON PRINTING CORP.,  
BILL L. DAVIS and  
JESSE S. WILLIAMSON,**

**Defendants.**

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**CIVIL ACTION NO. 3-99CV1154-M**

**PROTECTIVE ORDER**

Upon the agreement of the parties that a Protective Order pursuant to Rule 26(c) of the Federal Rules of Civil Procedure is desirable in this action, and with the approval of the Court,

IT IS ORDERED as follows:

1. As used in this Order, "Confidential Information" shall mean any type or classification of information that is designated as confidential by a supplying party, whether it be a document, information contained in a document, information revealed during a deposition, information revealed in an interrogatory answer, or otherwise. In designating information as Confidential Information, the supplying party will make such designation only as to that information that it in good faith believes constitutes or contains information pertaining to its business that is not generally known and which the designating party would not normally reveal to third parties or would cause third parties to maintain in confidence. Confidential Information includes, but is not limited to, technical information such as new product designs, manufacturing techniques, processes, trade secrets, formulae, research and development information, customer lists, sales and cost information and pricing information, information that a party has treated as

confidential and has not publicly disclosed and any other information that would qualify as confidential pursuant to Rule 26(c)(7) of the Federal Rules of Civil Procedure.

2. The term "document" as used in this Order shall mean and include any and all written and graphic matter, however produced or reproduced, of any kind and description, including but not limited to all communications, correspondence, letters, telegrams, notes, memoranda of meetings, reports, directives, intracompany communications, documents, diaries, logs, contracts, licenses, ledgers, books of account, vouchers, checks, invoices, charge slips, receipts, freight bills, working papers, desk calendars, appointment books, maps, plats, engineering studies, drawings, photographs, and writings of every kind or description, tape recordings, computer printouts, computer programs, magnetic cards, microfilm, microfiches, or other electronic or mechanical information or data of any kind or description, including both original and copies.

3. "Qualified Person" as used in this Order means:

(a) Attorneys of record and attorneys designated as of counsel in this litigation who have executed this Order, and employees of such attorneys to whom it is necessary that the material be shown for purposes of this litigation; provided that execution of this Order by any member of a law firm representing a party shall constitute a representation that all persons in or employed by that firm that have viewed Confidential Information shall observe this Order;

(b) Plaintiff Howard W. DeMoore and Defendants Bill L. Davis and Jesse S. Williamson;

(c) A group of five (5) employees of Plaintiff Printing Research, Inc. and five (5) employees of Defendant Williamson Printing Corporation to whom it is necessary that the material be shown for purposes of this litigation, provided that each such person has executed an

acknowledgment in the form attached hereto as Exhibit A, which executed form shall be served on all parties. If either party needs to include additional employees, it shall make a request to the other party identifying the employees and the reasons they must be included. Consent to the addition of employees shall not be withheld unreasonably;

(d) Independent experts or consultants, who are not present or past employees of any party, such as technical and legal experts, who have qualified for access as provided in paragraph 4 hereof, and whose advise and consultation are being or will be used by a party in connection with the preparation for trial of this litigation, or in connection with any motions in this litigation, and their paralegal, secretarial and clerical employees to whom it is necessary that the material be shown for purposes of this litigation;

(e) An outside certified public accounting firm retained by a party to provide assistance in this litigation and the employees of such firm to whom it is necessary that the material be shown for purposes of this litigation, provided that the accountants in such firm who will have access to Confidential Information have executed an acknowledgment in the form attached hereto as Exhibit B, which executed form shall be served on all parties;

(f) Personnel of graphics or litigation support firms engaged by the parties or their attorneys to produce litigation exhibits and trial preparation media, provided such personnel have executed an acknowledgment in the form attached hereto as Exhibit A, which executed form shall be served on all parties;

(g) Attorneys brought in as co-counsel and employees of co-counsel to whom it is necessary that the material be shown for purposes of this litigation; provided that co-counsel execute an acknowledgement in the form attached hereto as Exhibit A, which executed form shall be served on all parties, execution of Exhibit A by any member of a law firm acting as co-

counsel to a party shall constitute a representation that all persons in or employed by that firm that have viewed Confidential Information shall observe this Order;

(h) Personnel of the court and court reporters retained by the parties or the court to record and transcribe testimony in this case; and,

(i) Any other person agreed to in writing by the parties or designated as a Qualified Person by order of this Court, after notice to all parties.

4. The disclosure of or access to Confidential Information to or by any independent experts or consultants as provided for in paragraph 3(d) hereof shall be only on the following conditions. The party seeking to have such expert or consultant qualified for access shall provide each other party a current curriculum vitae for such expert or consultant and signed acknowledgment in the form of Exhibit B hereto. Opposing counsel shall have five (5) days after receipt of the curriculum vitae and signed acknowledgment in which to make an appropriate application to the Court requesting that access to such information be denied to that expert or consultant. No Confidential Information shall be disclosed to such expert or consultant until the expiration of the five (5) days for the opposing party to make an application to the Court or, if such an application is made, until resolution of the application by agreement of the parties or order of the Court.

5. Any party may designate the documents, information, or portions thereof which the party considers to be appropriate for designation as Confidential Information at the time such documents, information or portions are produced or disclosed, or as soon thereafter as the person or entity seeking protection becomes aware of the nature of the documents, information or portions disclosed and sought to be protected hereunder, by the following procedure:

(a) In the case of documents produced for inspection pursuant to request or subpoena that are to be designated as Confidential Information, the party producing the documents sought to be protected shall notify the inspecting party that some of the information to be produced is to be deemed Confidential. All documents produced for inspection at a production for which such notice has been given shall be inspected only by persons qualified to have access to Confidential Information.

(b) In the case of documents which the inspecting party requests to be copied after the document inspection, the producing party may designate specific documents containing information to be protected by marking the copy of the document claimed to contain such information as "CONFIDENTIAL" or "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER" (hereinafter referred to as "the Notice") and by marking the actual pages thereof claimed to contain Confidential Information with the Notice. Copies delivered without such warning shall be deemed non-confidential, provided however that paragraph 12 is applicable as a curative provision for inadvertent omission of the Notice.

Where an entire document has been designated Confidential Information, the producing party shall, upon written request by any other party, specifically identify the portions of the document that are Confidential Information and the portions that are not Confidential Information. The requesting party may then redact the confidential portions and use the redacted document as if it were not designated as Confidential Information—but only after first checking the redacted document with the producing party to insure that all Confidential Information has, in fact, been redacted.

(c) In the case of copies of documents provided by the producing party in lieu of producing the documents for inspection, the producing party may designate specific

documents containing information to be protected by marking those pages of the copy claimed to contain such information with the Notice. Copies provided without the Notice shall thereafter be deemed nonconfidential, unless and until such time as those copies or portions thereof are designated as Confidential Information pursuant to paragraph 12.

(d) In the case of documents or copies thereof containing Confidential Information, but which are not designated confidential as a whole, such documents or copies thereof shall be subject to the terms of this Order only with respect to the specific portions thereof marked with the Notice.

(e) In the case of deposition testimony, any counsel of record or counsel of a nonparty who is present at the deposition may invoke the provisions of this Order by stating on the record that testimony being given, about to be given, or just given is deemed Confidential Information. The deposition reporter shall mark "CONFIDENTIAL—SUBJECT TO PROTECTIVE ORDER" the portions of the transcript containing testimony deemed Confidential Information. Additionally, the reporter shall mark the cover and title page of any transcript containing Confidential Information with the legend: "PORTIONS OF THIS TRANSCRIPT ARE CONFIDENTIAL—SUBJECT TO PROTECTIVE ORDER." The provisions of this paragraph may be invoked for the witness's entire deposition upon the commencement thereof, in which case the deponent's counsel shall, within fifteen (15) days after the transcript has been prepared, designate each page containing Confidential Information and notify all counsel in writing of such designation. The disclosing party shall have the right to exclude from attendance at a deposition, during such time as Confidential Information is to be disclosed, any person who is not entitled to have access to such information.

(f) In the case of responses to interrogatories and requests to admit, the Notice shall be placed next to each response containing Confidential Information, and the first page of the response shall also display the Notice.

6. A party may also designate as Confidential Information any document originating with that party produced through third-party discovery. If the document is produced at the deposition of a third-party witness, the claim of confidentiality shall be asserted on the record at the deposition to permit the foundation of that claim to be examined at that time. The party shall also have the right to designate as Confidential Information, pursuant to the procedure specified in paragraph 5 above, any testimony that discloses the contents of such documents. If the document is produced other than in conjunction with a deposition, the originating party may designate the document as Confidential Information pursuant to the procedure specified in paragraph 5.

7. All Confidential Information produced or exchanged in the course of this litigation shall be used solely for the purposes of this litigation and not for any business, competitive or commercial purpose or function.

8. Confidential Information shall not be made available to persons other than Qualified Persons, the party who produced the Confidential Information, or any person or party who is the proprietor or source of the Confidential Information or who received the Confidential Information prior to entry of this Order. Confidential Information shall be stored and handled in a manner and location reasonably calculated to prevent access by or inadvertent disclosure to persons other than Qualified Persons. Confidential Information produced or supplied by a company, corporation or other business entity may be used at any deposition of a current or former employee of such producing or supplying company, corporation or entity.

9. Any summary or copy of any designated Confidential Information shall be subject to the terms of this Order to the same extent as the information or document from which such summary or copy is made.

10. Nothing in this Order shall bar or otherwise restrict any attorney from rendering advice to his client with respect to this litigation and, in the course of rendering advice, referring to or relying generally on his examination of Confidential Information produced or exchanged; provided, however, that in rendering such advice and in otherwise communicating with his client, the attorney shall not disclose the contents of any Confidential Information produced by another party if that disclosure would be contrary to the terms of this Order.

11. No party shall be responsible to another party for any use made of information produced and not designated as Confidential Information prior to the time of such use.

12. The inadvertent or unintentional disclosure of Confidential Information, regardless of whether the information was so designated at the time of disclosure, shall not be deemed a waiver in whole or in part of a party's claim of confidentiality, either as to the specific information disclosed or as to any other information relating to the same or related subject matter. Such inadvertent or unintentional disclosure may be rectified by notifying in writing the counsel of record of all parties to whom the information was disclosed that the information is confidential. Such notification shall constitute a designation of the information as Confidential Information. Likewise, the inadvertent disclosure or production of work product or attorney client documents shall not constitute a waiver. Such documents shall be returned on request.

13. A party shall not be obligated to challenge the propriety of a confidentiality designation at the time made, and a failure to do so shall not preclude a subsequent challenge. In the event that any party to this litigation disagrees at any stage of these proceedings with the



designation of any information as Confidential Information, the parties shall first try to resolve such dispute in good faith on an informal basis. If the dispute cannot be resolved, the objecting party may seek appropriate relief from this Court. In that event, the party asserting that the information is not Confidential Information shall have the burden of establishing the same.

14. Information is not Confidential Information if it is information that:

- (a) is publicly available at the time of disclosure in substantially the same form that it was provided by the producing party;
- (b) becomes publicly available, through no fault of the receiving party, in substantially the same form that it was provided by the providing party;
- (c) the receiving party can show was rightfully in its possession or knowledge at the time of disclosure;
- (d) the receiving party receives at a later date from a third party without restriction as to disclosure (including restrictions imposed pursuant to the terms of this Order) so long as that third party had a common law or statutory right to disclose that information without restriction and would not breach the confidence of any party by such disclosure; or
- (e) can be established by documentary evidence to have been independently developed by the receiving party without the use of or reliance upon any of the producing parties' Confidential Information.

15. If any information, documents or things designated as Confidential Information hereunder, or any pleadings, affidavits, briefs, memoranda or other papers reproducing, paraphrasing, paragraphing, or otherwise revealing Confidential Information, are to be filed with the Court, such information shall be filed in sealed envelopes or other appropriate sealed containers on which shall be endorsed (1) the title and docket number of this action, (2) an

indication of the nature of the contents of such sealed envelope or container, (3) the designation "CONFIDENTIAL—SUBJECT TO PROTECTIVE ORDER" and (4) a statement substantially in the following form:

This envelope contains documents that are filed in this case by (name of party) and subject to a Protective Order entered by the Court. It is not to be opened or the contents displayed or revealed, except in compliance with such Protective Order or until further order of the Court.

The Clerk shall maintain such information, documents or things under seal, except that any Judges or Magistrates exercising responsibility in this litigation, and their legal, administrative, secretarial or clerical staffs, shall have access to documents under seal as necessary in adjudicating or administering this action. The foregoing shall not prevent a second copy of any pleading or paper specifically intended for review by the Court from being hand delivered to the Court's chambers to insure that the same is brought to its attention, provided that: (a) such copy is also placed in sealed envelopes or containers endorsed with (i) the information described above in items (1), (2), (3) and (4) and (ii) a statement to the effect that the envelope contains a second copy of filed materials provided to the Court for its convenience and (b) each page thereof or exhibit containing or referring to Confidential Information shall be marked or designated confidential in accordance with paragraph 5 hereof.

16. Within thirty (30) days after the conclusion of this litigation, any originals or reproductions of any documents designated as Confidential Information and produced in this litigation shall be returned to the producing party. To the extent the provisions of any orders entered in this action restrict the communication and use of Confidential Information, including, but not limited to, that contained in documents, affidavits, briefs or memoranda filed with the Court, or deposition transcripts, such orders shall continue to be binding after the conclusion of

this litigation, except (a) that there shall be no restriction on documents that are used as exhibits in open court (unless the Court shall seal the record or that portion of the record containing exhibits or specific exhibits) and (b) that a party may seek the written permission of the producing party or further order of the Court with respect to dissolution or modification of such orders. The Court shall retain personal jurisdiction of the parties and those who have signed acknowledgment forms hereunder for purposes of enforcement of this Order.

17. Nothing in this Order shall be deemed to preclude any party from seeking and obtaining, on an appropriate showing, further or additional protection with respect to documents or other information sought in discovery as that party may consider appropriate.

18. Notwithstanding the provisions hereof, documents or information designated for protection pursuant to this Order may be introduced into evidence, or otherwise disclosed at trial, hearings, and other court proceedings, after notice to counsel for all parties in sufficient time to permit the designating party to seek appropriate relief to preserve the confidentiality of such information. Both parties agree and are ordered to make a good faith effort to minimize the loss of confidentiality.

19. In the event discovery is sought from non-parties that would require the production of documents or information which could be designated as Confidential Information, the non-parties, at their option, may so designate such material within the terms of this Order. The receiving parties agree to treat such documents and things designated as Confidential Information by non-parties according to the terms of this Order.

Signed on this \_\_\_\_ day of April, 2000.

---

United States District Judge

**APPROVED AND AGREED TO:**

---

William D. Harris, Jr.  
Texas State Bar No. 09109000  
L. Dan Tucker  
Texas State Bar No. 20276500  
Robert M. Mowrey  
Texas State Bar No. 14607500  
LOCKE LIDDELL & SAPP, L.L.P.  
2200 Ross Ave., Suite 2200  
Dallas, Texas 75201

**ATTORNEYS FOR PLAINTIFFS**

---

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David P. Poole  
Texas State Bar No. 16123750  
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WORSHAM, FORSYTHE & WOOLDRIDGE, L.L.P.  
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1601 Bryan Street  
Dallas, Texas 75201-3402  
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Facsimile: (214) 880-0011

**ATTORNEYS FOR DEFENDANTS**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**v.**

**Defendants.**

[illegible]

**CIVIL ACTION NO. 3-99CV1154-M**

I, \_\_\_\_\_, an employee of \_\_\_\_\_, with the title of \_\_\_\_\_, acknowledge that I have carefully read the Protective Order entered in this action and agree to be bound by its terms. I understand that Confidential Information is: (a) to be used solely for this litigation; (b) shown only to Qualified Persons; (c) maintained in a manner reasonably calculated to prevent persons other than Qualified Persons from accessing or inadvertently discovering such information; and (d) returned at the conclusion of this litigation pursuant to the Protective Order. I understand that any violation of the Protective Order may be punishable as contempt of court. I agree to submit to the jurisdiction of the United States District Court for the Northern District of Texas so that the Court may enforce my compliance with the Protective Order and, if necessary, punish violations of the Protective Order.

Signed on this \_\_\_\_\_ day of \_\_\_\_\_, 2000.

Page 13

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

~~~~~

## **ACKNOWLEDGMENT OF PROTECTIVE ORDER BY EXPERT OR CONSULTANT**

1. My full name is \_\_\_\_\_.
2. My address is \_\_\_\_\_.
3. My present employer is \_\_\_\_\_.
4. My job description is \_\_\_\_\_.
5. My prior regular employer was \_\_\_\_\_.

6. My past or present regular employment of, by, or with any party to the above-entitled action was or is

7. I also serve as an employee, agent, officer or director of the following entities:

---

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8. I have received a copy of the Protective Order entered in the above-referenced case, and I have carefully read and understand the provisions of the Protective Order. I will comply with all of the provisions of the Protective Order.

9. I will not disclose or permit access to any Confidential Information to any one not qualified to receive that information under the Protective Order, and I will use any such information only with respect to this case.

10. I will return all Confidential Information that comes into my possession, and all documents or things which I have prepared relating to such information, to an attorney representing the party that has employed or retained me.

11. I understand that any violation of the Protective Order may be punishable as contempt of court. I submit to the jurisdiction of the United States District Court for the Northern District of Texas, Dallas Division, so that the Court may enforce my compliance with the Protective Order and, if necessary, punish violations of the Protective Order.

Signed on this \_\_\_\_ day of \_\_\_\_\_, 2000.

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EXHIBIT D

## EXHIBIT D

# **Worsham Forsythe Wooldridge LLP**

**John P. Pinkerton**

Direct Dial: 214.979.3065

Email: [jpinkerton@worsham.net](mailto:jpinkerton@worsham.net)

April 26, 2000



Steven D. Wilson, Esq.  
Locke Liddell & Sapp, L.L.P.  
2200 Ross Avenue, Suite 2200  
Dallas, Texas 75201

Re: *Printing Research, Inc., et al. v. Williamson Printing Corporation, et al.*  
Civil Action No. 3:99-CV-1154-M

Dear Steve:

I received your letter of April 21, 2000 concerning the proposed protective order by e-mail, together with your latest draft of the protective order. Based on your comments and draft, I made some additional changes to our proposed form of protective order, and I am enclosing a copy of our revised draft, together with a red-lined version.

If you will review the red-lined version, you will see that I have endeavored to make the changes you proposed and to satisfy the concerns you expressed in our telephone conversation, except for three items:

- (1) disclosure of confidential information by the parties to the Patent Office (paragraphs 7, 16 and Exhibits A and B);
- (2) the party having the burden of proof in the event there is a dispute as to whether information should properly be designated as confidential (paragraph 13); and,
- (3) your provision concerning the inadvertent disclosure of work product or attorney/client privilege documents (your paragraph 12).

Note that I added additional provisions at the end of paragraph 4. The purpose of this change is to make it possible, consistent with the federal rules, for each party to provide confidential information to consulting experts without disclosing their identities to opposing counsel. Consulting experts would, however, be required to comply with the protective order and their identities would

*Attorneys and Counselors at Law*

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Steven D. Wilson, Esq.  
April 26, 2000  
Page 2

ultimately be disclosed at the end of the litigation or at such time as they may be designated as testifying experts. I should have included these provisions in the original draft I sent to Bill, but forgot to do so.

Your objections to the parties disclosing confidential information to the Patent Office are illusory. First, any disclosure of confidential information to the Patent Office would be for the purpose of complying with applicable legal and ethical obligations, rather than a business, competitive or commercial purpose. The issues of inventorship and derivation are common to both the litigation and the reissue proceeding. Information obtained in discovery in this case by either party, including confidential information, could well qualify as "material" information under 37 C.F.R. §1.56(b). With respect to that information, counsel for both Plaintiffs and Defendants in this case could have an obligation to disclose it to the Patent Office pursuant to 37 C.F.R. §1.56(c)(3), as well as §3.03(a)(3) of the Texas Disciplinary Rules of Professional Conduct. Thus, it is essential for counsel for both parties to have the right to submit confidential information to the Patent Office to comply with their legal and ethical obligations.

Second, neither Plaintiffs nor Defendants would be prejudiced by submitting confidential information to the Patent Office because the information would be submitted on a confidential basis subject to a petition to expunge pursuant to 37 C.F.R. §1.59(b) and Manual of Patent Examining Procedure §§724.02 (Confidentiality) and 724.05 (Petition to Expunge). The way this procedure works is that the examiner would only retain, and make a part of the reissue application file, the specific portion of any document or other information that is deemed to be material. All information that is not deemed to be material would be returned and not made a part of the reissue application file.

The threat of a harmful disclosure of confidential information that you raise assumes, of course, that the discovery materials to be produced by Plaintiffs are trade secrets or confidential information. In view of the nature of this case, it is doubtful that much of the information and documents to be produced actually constitute trade secrets or confidential information. This is particularly true with respect to documents relating to PRI's EZ interstation flexo printer/coater because it has been shown and described in published brochures, presentations to customers and patent applications published in various countries throughout the world. Furthermore, any detailed design or manufacturing information that might be considered to be a trade secret or confidential information would, in all likelihood, not be considered by a reasonable examiner to be material information.

Finally, your argument with respect to the merits of the case, the allegation of stealing, is not only irrelevant to the issue of protection of confidential information, but unsupported and contrary to all known evidence, including the testimony of former employees of Printing Research. Suffice it to say that Jesse Williamson and Bill Davis are in fact the proper inventors of the invention of the patent-in-suit and that Plaintiffs derived their knowledge of the invention from Defendants.

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T04T50 9625760

Steven D. Wilson, Esq.

April 26, 2000

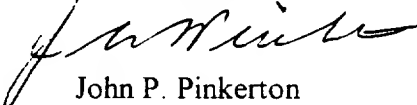
Page 3

In regard to our paragraph 3(g), it was included to specifically allow Bobby Falk to have access to confidential information because he is prosecuting the reissue application. It was not intended to provide for co-counsel, as you suggest, and your paragraph 3(g) would not be needed for that purpose because counsel entering their appearances late in the case would qualify to receive confidential information under paragraph 3(a) once they sign the protective order or an acknowledgment to be bound by it. If you disagree, I certainly would have no objection to adding your paragraph 3(g) in addition to the 3(g) in our draft.

I request that you again consider your objections to items 1 and 2 listed above and let me know if we can reach an agreement on them. Also, please consider the changes to paragraph 4 and let me know if they are acceptable to you. Except for the three items mentioned above and the changes to paragraph 4, I think any of the differences between your latest draft and the enclosed draft are trifling.

Please let me know this week whether we can resolve these remaining issues. At this point in time, entry of the protective order is delaying discovery in this case and, in view of the schedule for completion of pretrial proceedings, any issues relating to the protective order need to be worked out by the parties or decided by the Court as soon as possible. I look forward to hearing from you.

Very truly yours,



John P. Pinkerton

JPP:tsmc  
Enclosure(s)

ENCLOSURE

42-16

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

PRINTING RESEARCH, INC.  
and HOWARD W. DEMOORE,

Plaintiffs,

v.

WILLIAMSON PRINTING  
CORPORATION, BILL L. DAVIS  
and JESSE S. WILLIAMSON,

Defendants.

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CIVIL ACTION NO. 3-99CV1154-M

**PROTECTIVE ORDER**

Upon the agreement of the parties that a Protective Order pursuant to Rule 26(c) of the Federal Rules of Civil Procedure is desirable in this action, and with the approval of the Court,

IT IS ORDERED as follows:

1. As used in this Order, "Confidential Information" shall mean any type or classification of information that is designated as confidential by a supplying party, whether it be a document, information contained in a document, information revealed during a deposition, information revealed in an interrogatory answer, or otherwise. In designating information as Confidential Information, the supplying party will make such designation only as to that information that it in good faith believes constitutes or contains information pertaining to its business that is not generally known and which the designating party would not normally reveal to third parties or would cause third parties to maintain in confidence. Confidential Information includes, but is not limited to, technical information such as new product designs, manufacturing techniques, processes, trade secrets, formulae, research and development information, customer lists, sales and cost information and pricing information, information that a party has treated as

confidential and has not publicly disclosed and any other information that would qualify as confidential pursuant to Rule 26(c)(7) of the Federal Rules of Civil Procedure.

2. The term "document" as used in this Order shall mean and include any and all written and graphic matter, however produced or reproduced, of any kind and description, including but not limited to all communications, correspondence, letters, telegrams, notes, memoranda of meetings, reports, directives, intracompany communications, documents, diaries, logs, contracts, licenses, ledgers, books of account, vouchers, checks, invoices, charge slips, receipts, freight bills, working papers, desk calendars, appointment books, maps, plats, engineering studies, drawings, photographs, and writings of every kind or description, tape recordings, computer printouts, computer programs, magnetic cards, microfilm, microfiches, or other electronic or mechanical information or data of any kind or description, including both original and copies.

3. "Qualified Person" as used in this Order means:

(a) Attorneys of record and attorneys designated as of counsel in this litigation who have executed this Order, and employees of such attorneys to whom it is necessary that the material be shown for purposes of this litigation; provided that execution of this Order by any member of a law firm representing a party shall constitute a representation that all persons in or employed by that firm that have viewed Confidential Information shall observe this Order;

(b) Plaintiff Howard W. DeMoore and Defendants Bill L. Davis and Jesse S. Williamson;

(c) No more than five (5) employees of Plaintiff Printing Research, Inc. and no more than five (5) employees of Defendant Williamson Printing Corporation to whom it is necessary that the material be shown for purposes of this litigation, provided that each such person has executed an acknowledgment in the form attached hereto as Exhibit A, which executed form shall be served on all parties. Additional employees of Printing Research, Inc. and

Williamson Printing Corporation may be added as Qualified Persons hereunder by consent of the parties, which consent shall not be unreasonably withheld. The party desiring to add additional employees shall make a written request to the other parties identifying the employees and the reasons they need to be included, and the other parties shall respond in writing to such request within three (3) days of receipt thereof;

(d) Independent experts or consultants, who are not present or past employees of any party, such as technical and legal experts, who are qualified for access as provided in paragraph 4 hereof, and whose advise and consultation are being or will be used by a party in connection with the preparation for trial of this litigation, or in connection with any motions in this litigation, and their paralegal, secretarial and clerical employees to whom it is necessary that the material be shown for purposes of this litigation;

(e) An outside certified public accounting firm retained by a party to provide assistance in this litigation and the employees of such firm to whom it is necessary that the material be shown for purposes of this litigation, provided that the accountants in such firm who will have access to Confidential Information have executed an acknowledgment in the form attached hereto as Exhibit B, which executed form shall be served on all parties;

(f) Personnel of graphics or litigation support firms engaged by the parties or their attorneys to produce litigation exhibits and trial preparation media, provided such personnel have executed an acknowledgment in the form attached hereto as Exhibit A, which executed form shall be served on all parties;

(g) Robert Hardy Falk of the firm of Falk & Fish, l.l.p., provided that he has executed an acknowledgment in the form attached hereto as Exhibit A, which executed form shall be served on all parties;

(h) Personnel of the court and court reporters retained by the parties or the court to record and transcribe testimony in this case; and,

(i) Any other person agreed to in writing by the parties or designated as a Qualified Person by order of this Court, after notice to all parties.

4. The disclosure of or access to Confidential Information to or by any independent experts or consultants as provided for in paragraph 3(d) hereof shall be only on the following conditions. The party seeking to have such expert or consultant qualified for access shall provide each other party a current curriculum vitae for such expert or consultant and signed acknowledgment in the form of Exhibit B hereto. Opposing counsel shall have five (5) days after receipt of the curriculum vitae and signed acknowledgment in which to make an appropriate application to the Court requesting that access to such information be denied to that expert or consultant. No Confidential Information shall be disclosed to such expert or consultant until the expiration of the five (5) days for the opposing party to make an application to the Court or, if such an application is made, until resolution of the application by agreement of the parties or order of the Court. The foregoing conditions shall not apply to the disclosure of Confidential Information to any consulting expert who does not testify at the trial of this action or whose opinions or reports are not reviewed or relied upon by any other witness; provided, however, that such consulting expert shall sign an undertaking in the form of Exhibit B hereto prior to receiving any Confidential Information and such undertaking shall be retained by the counsel employing such expert and, at the conclusion of the litigation, such undertaking shall be served on all parties. Furthermore, in the event such consultant is designated or testifies as an expert witness or his opinions or reports are reviewed or relied upon by any other witness, then such undertaking shall also be served on all parties.

5. Any party may designate the documents, information, or portions thereof which the party considers to be appropriate for designation as Confidential Information at the time such documents, information or portions are produced or disclosed, or as soon thereafter as the person



or entity seeking protection becomes aware of the nature of the documents, information or portions disclosed and sought to be protected hereunder, by the following procedure:

(a) In the case of documents produced for inspection pursuant to request or subpoena that are to be designated as Confidential Information, the party producing the documents sought to be protected shall notify the inspecting party that some of the information to be produced is to be deemed Confidential. All documents produced for inspection at a production for which such notice has been given shall be inspected only by persons qualified to have access to Confidential Information.

(b) In the case of documents which the inspecting party requests to be copied after the document inspection, the producing party may designate specific documents containing information to be protected by marking the copy of the document claimed to contain such information as "CONFIDENTIAL" or "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER" (hereinafter referred to as "the Notice") and by marking the actual pages thereof claimed to contain Confidential Information with the Notice. Copies delivered without such warning shall be deemed nonconfidential; provided, however, that paragraph 12 shall apply as a curative provision for inadvertent omission of the Notice.

Where an entire document has been designated Confidential Information, the producing party shall, upon written request by any other party, specifically identify the portions of the document that are Confidential Information and the portions that are not Confidential Information. The requesting party may then redact the confidential portions and use the redacted document as if it were not designated as Confidential Information, but only after first checking the redacted document with the producing party to ensure that all Confidential Information has, in fact, been redacted.

(c) In the case of copies of documents provided by the producing party in lieu of producing the documents for inspection, the producing party may designate specific

documents containing information to be protected by marking those pages of the copy claimed to contain such information with the Notice. Copies provided without the Notice shall thereafter be deemed nonconfidential, unless and until such time as those copies or portions thereof are designated as Confidential Information pursuant to paragraph 12.

(d) In the case of documents or copies thereof containing Confidential Information, but which are not designated confidential as a whole, such documents or copies thereof shall be subject to the terms of this Order only with respect to the specific portions thereof marked with the Notice.

(e) In the case of deposition testimony, any counsel of record or counsel of a nonparty who is present at the deposition may invoke the provisions of this Order by stating on the record that testimony being given, about to be given, or just given is deemed Confidential Information. The deposition reporter shall mark the portions of the transcript in which testimony was designated as Confidential Information with the notation "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER" Additionally, the reporter shall mark the cover and title page of any transcript containing Confidential Information with the notation "PORTIONS OF THIS TRANSCRIPT ARE CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER." The provisions of this paragraph may be invoked for the witness's entire deposition upon the commencement thereof, in which case the deponent's counsel shall, within fifteen (15) days after the transcript has been prepared, designate each page containing Confidential Information and notify all counsel in writing of such designation. The disclosing party shall have the right to exclude from attendance at a deposition, during such time as Confidential Information is to be disclosed, any person who is not entitled to have access to such information.

(f) In the case of responses to interrogatories and requests to admit, the Notice shall be placed next to each response containing Confidential Information, and the first page of the response shall also display the Notice.

6. A party may also designate as Confidential Information any document originating with that party produced through third-party discovery. If the document is produced at the deposition of a third-party witness, the claim of confidentiality shall be asserted on the record at the deposition to permit the foundation of that claim to be examined at that time. The party shall also have the right to designate as Confidential Information, pursuant to the procedure specified in paragraph 5 above, any testimony that discloses the contents of such documents. If the document is produced other than in conjunction with a deposition, the originating party may designate the document as Confidential Information pursuant to the procedure specified in paragraph 5.

7. All Confidential Information produced or exchanged in the course of this litigation shall be used solely for the purposes of this litigation and any proceedings in the United States Patent and Trademark Office involving any of the parties, including, but not limited to, the proceedings involving reissue application serial number 09/315,796, and not for any business, competitive or commercial purpose or function.

8. Confidential Information shall not be made available to persons other than Qualified Persons, the party who produced the Confidential Information, or any person or party who is the proprietor or source of the Confidential Information or who received the Confidential Information prior to entry of this Order. Confidential Information produced or supplied by a company, corporation or other business entity may be used at any deposition of a current or former employee of such producing or supplying company, corporation or entity. Confidential Information shall be stored and handled in a manner and location reasonably calculated to prevent access by or inadvertent disclosure to persons other than Qualified Persons.

9. Any summary or copy of any designated Confidential Information shall be subject to the terms of this Order to the same extent as the information or document from which such summary or copy is made.

10. Nothing in this Order shall bar or otherwise restrict any attorney from rendering advice to his client with respect to this litigation and, in the course of rendering advice, referring to or relying generally on his examination of Confidential Information produced or exchanged; provided, however, that in rendering such advice and in otherwise communicating with his client, the attorney shall not disclose the contents of any Confidential Information produced by another party if that disclosure would be contrary to the terms of this Order.

11. No party shall be responsible to another party for any use made of information produced and not designated as Confidential Information prior to the time of such use.

12. The inadvertent or unintentional disclosure of Confidential Information, regardless of whether the information was so designated at the time of disclosure, shall not be deemed a waiver in whole or in part of a party's claim of confidentiality, either as to the specific information disclosed or as to any other information relating to the same or related subject matter. Such inadvertent or unintentional disclosure may be rectified by notifying in writing the counsel of record of all parties to whom the information was disclosed that the information is confidential. Such notification shall constitute a designation of the information as Confidential Information.

13. A party shall not be obligated to challenge the propriety of a confidentiality designation at the time made, and a failure to do so shall not preclude a subsequent challenge. In the event that any party to this litigation disagrees at any stage of these proceedings with the designation of any information as Confidential Information, the parties shall first try to resolve such dispute in good faith on an informal basis. If the dispute cannot be resolved, the objecting party may seek appropriate relief from this Court. In that event, the party asserting that the information is Confidential Information shall have the burden of establishing the same. Until the Court enters an order declassifying any information designated as Confidential Information, it shall continue to be treated as Confidential Information hereunder.

Case 1:10-cv-01401-UNA

14. Information is not Confidential Information hereunder if it is information that:
- (a) is publicly available at the time of disclosure in substantially the same form that it was provided by the producing party;
  - (b) becomes publicly available, through no fault of the receiving party, in substantially the same form that it was provided by the providing party;
  - (c) the receiving party can show was rightfully in its possession or knowledge at the time of disclosure;
  - (d) the receiving party receives at a later date from a third party without restriction as to disclosure (including restrictions imposed pursuant to the terms of this Order) so long as that third party had a common law or statutory right to disclose that information without restriction and would not breach the confidence of any party by such disclosure; or
  - (e) can be established by documentary evidence to have been independently developed by the receiving party without the use of or reliance upon any of the producing parties' Confidential Information.

15. If any information, documents or things designated as Confidential Information hereunder, or any pleadings, affidavits, briefs, memoranda or other papers reproducing, paraphrasing or otherwise revealing such Confidential Information, are to be filed with the Court, such information shall be filed in sealed envelopes or other appropriate sealed containers on which shall be endorsed (1) the title and docket number of this action, (2) an indication of the nature of the contents of such sealed envelope or other container, (3) the designation "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER" and (4) a statement substantially in the following form:

This envelope contains documents that are filed in this case by (name of party) and subject to a Protective Order entered by the Court. It is not to be opened or the contents displayed or revealed, except in compliance with such Protective Order or until further order of the Court.

The Clerk shall maintain such information, documents or things under seal, except that any Judge or Magistrate exercising responsibility in this litigation, and their legal, administrative, secretarial or clerical staffs, shall have access to documents under seal as necessary in adjudicating or administering this action. The foregoing shall not prevent a second copy of any pleading or paper specifically intended for review by the Court from being hand delivered to the Court's chambers to insure that the same is brought to its attention, provided that (a) such copy is also placed in a sealed envelope or container endorsed with (i) the information described above in items (1), (2), (3) and (4) and (ii) a statement to the effect that the envelope contains a second copy of filed materials that is being provided to the Court for its convenience and (b) each page thereof or exhibit containing or referring to Confidential Information shall be marked or designated confidential in accordance with paragraph 5 hereof.

16. Any information, documents or things designated as Confidential Information hereunder by any party or person that are to be submitted by another party to the United States Patent and Trademark Office ("PTO") shall be submitted in sealed envelopes or other appropriate sealed containers on which shall be endorsed (1) the title and number of the PTO proceeding (2) a description of the nature of the contents of the sealed envelope or container, (3) the designation "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER" and (4) a statement substantially in the following form:

This envelope contains documents that have been designated as Confidential Information pursuant to a Protective Order entered by the United States District Court for the Northern District of Texas, Dallas Division, in the case styled Printing Research, Inc., et al. v. Williamson Printing Corporation, et al., Civil Action No. 3-99-CV 1154-M, and for which confidential treatment is being sought pursuant to M.P.E.P. §724.05.

The party submitting such Confidential Information to the PTO shall make the appropriate request to have such information treated and maintained as confidential by the PTO pursuant to M.P.E.P. §724.05 and shall have the right to seek to expunge such material pursuant to 37 C.F.R. §1.59(b) and M.P.E.P. §724.02.

17. Within thirty (30) days after the conclusion of this litigation, any originals or reproductions of any documents designated as Confidential Information and produced in this litigation shall be returned to the producing party. To the extent the provisions of any orders entered in this action restrict the communication and use of Confidential Information, including, but not limited to, that contained in documents, affidavits, briefs or memoranda filed with the Court, or deposition transcripts, such orders shall continue to be binding after the conclusion of this litigation, except (a) that there shall be no restriction on documents that are used as exhibits in open Court (unless the Court shall seal the record or that portion of the record containing exhibits or specific exhibits) and (b) that a party may seek the written permission of the producing party or further order of the Court with respect to dissolution or modification of such orders. The Court shall retain personal jurisdiction of the parties and those who have signed acknowledgment forms hereunder for purposes of enforcement of this Order.

18. Nothing in this Order shall be deemed to preclude any party from seeking and obtaining, on an appropriate showing, further or additional protection with respect to documents or other information sought in discovery as that party may consider appropriate.

19. Notwithstanding the provisions hereof, documents or information designated for protection pursuant to this Order may be introduced into evidence, or otherwise disclosed at trial, hearings and other court proceedings after notice to counsel for all parties in sufficient time to permit the designating party to seek appropriate relief to preserve the confidentiality of such information. Both parties agree and are ordered to make a good faith effort to minimize the loss of confidentiality.

20. In the event discovery is sought from non-parties that would require the production of documents or information which could be designated as Confidential Information, the non-parties, at their option, may so designate such material within the terms of this Order. The receiving parties agree to treat such documents and things designated as Confidential Information by non-parties according to the terms of this Order.

Signed on this \_\_\_\_ day of April, 2000.

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United States District Judge

**APPROVED AND AGREED TO:**

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William D. Harris, Jr.  
Texas State Bar No. 09109000  
L. Dan Tucker  
Texas State Bar No. 20276500  
Robert M. Mowrey  
Texas State Bar No. 14607500  
LOCKE LIDDELL & SAPP, L.L.P.  
2200 Ross Ave., Suite 2200  
Dallas, Texas 75201

**ATTORNEYS FOR PLAINTIFFS**

---

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David P. Poole  
Texas State Bar No. 16123750  
Robert J. Ward  
Texas State Bar No. 00791879  
WORSHAM, FORSYTHE & WOOLDRIDGE,  
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Energy Plaza, 30<sup>th</sup> Floor  
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Dallas, Texas 75201-3402  
Telephone: (214) 979-3000  
Facsimile: (214) 880-0011

**ATTORNEYS FOR DEFENDANTS**



**EXHIBIT A**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**PRINTING RESEARCH, INC.  
and HOWARD W. DEMOORE,**

**Plaintiffs,**

v.

**WILLIAMSON PRINTING  
CORPORATION. BILL L. DAVIS and  
JESSE S. WILLIAMSON,**

**Defendants.**

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**CIVIL ACTION NO. 3-99CV1154-M**

**ACKNOWLEDGMENT OF PROTECTIVE ORDER**

I, \_\_\_\_\_, an employee of \_\_\_\_\_, with the title of \_\_\_\_\_, acknowledge that I have carefully read the Protective Order entered in this action and agree to be bound by its terms. I understand that Confidential Information is: (a) to be used solely for this litigation and any proceedings in the U.S. Patent and Trademark Office ("PTO") involving any of the parties; (b) shown only to Qualified Persons; (c) maintained in a manner reasonably calculated to prevent persons other than Qualified Persons from accessing or inadvertently discovering such information; and (d) returned at the conclusion of this litigation or such proceedings in the PTO pursuant to the Protective Order. I understand that any violation of the Protective Order may be punishable as contempt of Court. I submit to the jurisdiction of this Court for the purpose of enforcing my compliance with the Protective Order and, if necessary, to punish violations of the Protective Order.

Signed this \_\_\_\_\_ day of April, 2000.

\_\_\_\_\_

**EXHIBIT B**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**PRINTING RESEARCH, INC.  
and HOWARD W. DEMOORE,**

**Plaintiffs,**

**v.**

**WILLIAMSON PRINTING  
CORPORATION. BILL L. DAVIS and  
JESSE S. WILLIAMSON,**

**Defendants.**

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**CIVIL ACTION NO. 3-99CV1154-M**

**ACKNOWLEDGMENT OF  
PROTECTIVE ORDER BY EXPERT OR CONSULTANT**

1. My full name is \_\_\_\_\_

2. My address is \_\_\_\_\_

3. My present employer is \_\_\_\_\_

4. My job description is \_\_\_\_\_

5. My prior regular employer was: \_\_\_\_\_

6. My past or present regular employment of, by, or with any party to the above-entitled  
action was or is: \_\_\_\_\_

FILED 3-25-99





confidential and has not publicly disclosed and any other information that would qualify as confidential pursuant to Rule 26(c)(7) of the Federal Rules of Civil Procedure.

2. The term "document" as used in this Order shall mean and include any and all written and graphic matter, however produced or reproduced, of any kind and description, including but not limited to all communications, correspondence, letters, telegrams, notes, memoranda of meetings, reports, directives, intracompany communications, documents, diaries, logs, contracts, licenses, ledgers, books of account, vouchers, checks, invoices, charge slips, receipts, freight bills, working papers, desk calendars, appointment books, maps, plats, engineering studies, drawings, photographs, and writings of every kind or description, tape recordings, computer printouts, computer programs, magnetic cards, microfilm, microfiches, or other electronic or mechanical information or data of any kind or description, including both original and copies.

3. "Qualified Person" as used in this Order means:

(a) Attorneys of record and attorneys designated as of counsel in this litigation who have executed this Order, and employees of such attorneys to whom it is necessary that the material be shown for purposes of this litigation; provided that execution of this Order by any member of a law firm representing a party shall constitute a representation that all persons in or employed by that firm that have viewed Confidential Information shall observe this Order;

(b) Plaintiff Howard W. DeMoore and Defendants Bill L. Davis and Jesse S. Williamson;

(c) ~~{Employees}~~ [No more than five (5) employees] of Plaintiff Printing Research, Inc. and [no more than five (5) employees of] Defendant Williamson Printing Corporation to whom it is necessary that the material be shown for purposes of this litigation, provided that each such person has executed an acknowledgment in the form attached hereto as Exhibit A, which executed form shall be served on all ~~{parties;}~~ [parties. Additional employees

of Printing Research, Inc. and Williamson Printing Corporation may be added as Qualified Persons hereunder by consent of the parties, which consent shall not be unreasonably withheld. The party desiring to add additional employees shall make a written request to the other parties identifying the employees and the reasons they need to be included, and the other parties shall respond in writing to such request within three (3) days of receipt thereof.]

(d) Independent experts or consultants, who are not present or past employees of any party, such as technical and legal experts, [who are] qualified for access as provided in paragraph 4 hereof, [and] whose advise and consultation are being or will be used by a party in connection with the preparation for trial of this litigation, or in connection with any motions in this litigation, and their paralegal, secretarial and clerical employees to whom it is necessary that the material be shown for purposes of this litigation;

(e) An outside certified public accounting firm retained by a party to provide assistance in this litigation and the employees of such firm to whom it is necessary that the material be shown for purposes of this litigation, provided that the accountants in such firm who will have access to Confidential Information have executed an acknowledgment in the form attached hereto as Exhibit B, which executed form shall be served on all parties;

(f) Personnel of graphics or litigation support firms engaged by the parties or their attorneys to produce litigation exhibits and trial preparation media, provided such personnel have executed an acknowledgment in the form attached hereto as Exhibit A, which executed form shall be served on all parties;

(g) [Robert Hardy Falk of the firm of Falk & Fish, l.l.p., provided that he has executed an acknowledgment in the form attached hereto as Exhibit A, which executed form shall be served on all parties;

(h)] Personnel of the court and court reporters retained by the parties or the court to record and transcribe testimony in this case; and,

~~{(h)}~~~~{(i)}~~ Any other person agreed to in writing by the parties or designated as a Qualified Person by order of this Court, after notice to all parties.

4. The disclosure of or access to Confidential Information to or by any independent experts or consultants as provided for in paragraph 3(d) hereof shall be only on the following conditions. The party seeking to have such expert or consultant qualified for access shall provide each other party a current curriculum vitae for such expert or consultant and signed acknowledgment in the form of Exhibit B hereto. Opposing counsel shall have ~~{ten (10)}~~ [five (5)] days after receipt of the curriculum vitae and signed acknowledgment in which to make an appropriate application to the Court requesting that access to such information be denied to that expert or consultant. No Confidential Information shall be disclosed to such expert or consultant until the expiration of the ~~{ten (10)}~~ [five (5)] days for the opposing party to make an application to the Court or, if such an application is made, until resolution of the application by agreement of the parties or order of the Court. [The foregoing conditions shall not apply to the disclosure of Confidential Information to any consulting expert who does not testify at the trial of this action or whose opinions or reports are not reviewed or relied upon by any other witness; provided, however, that such consulting expert shall sign an undertaking in the form of Exhibit B hereto prior to receiving any Confidential Information and such undertaking shall be retained by the counsel employing such expert and, at the conclusion of the litigation, such undertaking shall be served on all parties. Furthermore, in the event such consultant is designated or testifies as an expert witness or his opinions or reports are reviewed or relied upon by any other witness, then such undertaking shall also be served on all parties.]

5. Any party may designate the documents, information, or portions thereof which the party considers to be appropriate for designation as Confidential Information at the time such documents, information or portions are produced or disclosed, or as soon thereafter as the person

or entity seeking protection becomes aware of the nature of the documents, information or portions disclosed and sought to be protected hereunder, by the following procedure:

(a) In the case of documents produced for inspection pursuant to request or subpoena that are to be designated as Confidential Information, the party producing the documents sought to be protected shall notify the inspecting party that some of the information to be produced is to be deemed Confidential. All documents produced for inspection at a production for which such notice has been given shall be inspected only by persons qualified to have access to Confidential Information.

(b) In the case of documents which the inspecting party requests to be copied after the document inspection, the producing party may ~~{designated}~~ [designate] specific documents containing information to be protected by marking the copy of the document claimed to contain such information as "CONFIDENTIAL" or "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER" (hereinafter referred to as "the Notice") and by marking the actual pages thereof claimed to contain Confidential Information with the Notice. Copies delivered without such warning shall ~~{thereafter be deemed non-confidential.}~~ [be deemed nonconfidential; provided, however, that paragraph 12 shall apply as a curative provision for inadvertent omission of the Notice.]

Where an entire document has been designated Confidential Information, the producing party shall, upon written request by any other party, specifically identify the portions of the document that are Confidential Information and the portions that are not Confidential Information. The requesting party may then redact the confidential portions and use the redacted document as if it were not designated as Confidential Information [, but only after first checking the redacted document with the producing party to ensure that all Confidential Information has, in fact, been redacted]



(c) In the case of copies of documents provided by the producing party in lieu of producing the documents for inspection, the producing party may designate specific documents containing information to be protected by marking those pages of the copy claimed to contain such information with the Notice. Copies provided without the Notice shall thereafter be deemed ~~{not confidential.}~~ [nonconfidential, unless and until such time as those copies or portions thereof are designated as Confidential Information pursuant to paragraph 12.]

(d) In the case of documents or copies thereof containing Confidential Information, but which are not designated confidential as a whole, such documents or copies thereof shall be subject to the terms of this Order only with respect to the specific portions thereof marked with the Notice.

(e) In the case of deposition testimony, any counsel of record or counsel of a nonparty who is present at the deposition may invoke the provisions of this Order by stating on the record that testimony being given~~[, about to be given, or just given]~~ is deemed Confidential Information. The deposition reporter shall mark the portions of the transcript in which testimony ~~{designated as confidential was given as Confidential.}~~ [was designated as Confidential Information with the notation "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER"] Additionally, the reporter shall mark the cover and title page of any transcript containing Confidential Information with the notation "PORTIONS OF THIS TRANSCRIPT ARE CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER." The provisions of this paragraph may be invoked for the witness's entire deposition upon the commencement thereof, in which case the deponent's counsel shall, within fifteen (15) days after the transcript has been prepared, designate each page containing Confidential Information and notify all counsel in writing of such designation. The disclosing party shall have the right to exclude from attendance at a deposition, during such time as Confidential Information is to be disclosed, any person who is not entitled to have access to such information.

(f) In the case of responses to interrogatories and requests to admit, the Notice shall be placed next to each response containing Confidential Information, and the first page of the response shall also display the Notice.

6. A party may also designate as Confidential Information any document originating with that party produced through third-party discovery. If the document is produced at the deposition of a third-party witness, the claim of confidentiality shall be asserted on the record at the deposition to permit the foundation of that claim to be examined at that time. The party shall also have the right to designate as Confidential Information, pursuant to the procedure specified in paragraph 5 above, any testimony that discloses the contents of such documents. If the document is produced other than in conjunction with a deposition, the originating party may designate the document as Confidential Information pursuant to the procedure specified in paragraph 5.

7. All Confidential Information produced or exchanged in the course of this litigation shall be used solely for the purposes of this litigation and [any proceedings in the United States Patent and Trademark Office involving any of the parties, including, but not limited to, the proceedings involving reissue application serial number 09/315,796, and] not for any business, competitive or commercial purpose or function.

8. Confidential Information shall not be made available to persons other than Qualified Persons, the party who produced the Confidential Information, or any person or party who is the proprietor or source of the Confidential Information or who received the Confidential Information prior to entry of this Order. Confidential Information produced or supplied by a company, corporation or other business entity may be used at any deposition of a current or former employee of such producing or supplying company, corporation or entity. [Confidential Information shall be stored and handled in a manner and location reasonably calculated to prevent access by or inadvertent disclosure to persons other than Qualified Persons.]

9. Any summary or copy of any designated Confidential Information shall be subject to the terms of this Order to the same extent as the information or document from which such summary or copy is made.

10. Nothing in this Order shall bar or otherwise restrict any attorney from rendering advice to his client with respect to this litigation and, in the course of rendering advice, referring to or relying generally on his examination of Confidential Information produced or exchanged; provided, however, that in rendering such advice and in otherwise communicating with his client, the attorney shall not disclose the contents of any Confidential Information produced by another party if that disclosure would be contrary to the terms of this Order.

11. No party shall be responsible to another party for any use made of information produced and not designated as Confidential Information [prior to the time of such use].

12. The inadvertent or unintentional disclosure of Confidential Information, regardless of whether the information was so designated at the time of disclosure, shall not be deemed a waiver in whole or in part of a party's claim of confidentiality, either as to the specific information disclosed or as to any other information relating to the same or related subject matter. Such inadvertent or unintentional disclosure may be rectified by notifying in writing the counsel of record of all parties to whom the information was disclosed that the information is confidential. Such notification shall constitute a designation of the information as Confidential Information.

13. A party shall not be obligated to challenge the propriety of a confidentiality designation at the time made, and a failure to do so shall not ~~(preclude)~~ [preclude] a subsequent challenge. In the event that any party to this litigation disagrees at any stage of these proceedings with the designation of any information as Confidential Information, the parties shall first try to resolve such dispute in good faith on an informal basis. If the dispute cannot be resolved, the objecting party may seek appropriate relief from this Court. In that event, the party asserting that

the information is Confidential Information shall have the burden of establishing the same.

[Until the Court enters an order declassifying any information designated as Confidential Information, it shall continue to be treated as Confidential Information hereunder.]

14. Information is not Confidential Information hereunder if it is] ~~{14. The~~  
~~restrictions set forth in paragraphs 7, 8 and 9 hereof shall not apply to}~~ information that:

(a) is publicly available at the time of disclosure in substantially the same form that it was provided by the producing party;

(b) becomes publicly available, through no fault of the receiving party, in substantially the same form that it was provided by the providing party;

(c) the receiving party can show was rightfully in its possession or knowledge at the time of disclosure;

(d) the receiving party receives at a later date from a third party without restriction as to disclosure~~{,}~~ [(including restrictions imposed pursuant to the terms of this Order)] so long as that third party had a common law or statutory right to disclose that information without restriction and would not breach the confidence of any party by such disclosure]; or

(e) can be established by documentary evidence to have been independently developed by the receiving party without the use of or reliance upon any of the producing parties' Confidential Information.

15. If any information, documents or things designated as Confidential Information hereunder, or any pleadings, affidavits, briefs, memoranda or other papers reproducing ~~{or paragraphing}~~ [, paraphrasing or otherwise revealing] such Confidential Information, are to be filed with the Court, such information shall be filed in sealed envelopes or other appropriate sealed containers on which shall be endorsed (1) the title [and docket number] of this action, (2) an indication of the nature of the contents of such sealed envelope or other container, (3) the

designation "CONFIDENTIAL {" or "CONFIDENTIAL}- SUBJECT TO PROTECTIVE ORDER" and (4) a statement substantially in the following form:

This envelope contains documents that are filed in this case by (name of party) and subject to a Protective Order entered by the Court. It is not to be opened or the contents displayed or revealed, except in compliance with such Protective Order or until further order of the Court.

The Clerk shall maintain such information, documents or things under seal, except that any Judge or Magistrate exercising responsibility in this litigation, and their legal, administrative, secretarial or clerical staffs, shall have access to documents under seal as necessary in adjudicating or administering this action. The foregoing shall not prevent a second copy of any pleading or paper specifically intended for review by the Court from being hand delivered to the Court's chambers to insure that the same is brought to its attention, provided that [(a) such copy is also placed in a sealed envelope or container endorsed with (i) the information described above in items (1), (2), (3) and (4) and (ii) a statement to the effect that the envelope contains a second copy of filed materials that is being provided to the Court for its convenience and (b)] each page thereof or exhibit containing or referring to Confidential Information shall be marked or designated confidential in accordance with paragraph 5 hereof.

16[ Any information, documents or things designated as Confidential Information hereunder by any party or person that are to be submitted by another party to the United States Patent and Trademark Office ("PTO") shall be submitted in sealed envelopes or other appropriate sealed containers on which shall be endorsed (1) the title and number of the PTO proceeding (2) a description of the nature of the contents of the sealed envelope or container, (3) the designation "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER" and (4) a statement substantially in the following form:

This envelope contains documents that have been designated as Confidential Information pursuant to a Protective Order entered by the United States District Court for the Northern District of Texas, Dallas Division, in the case styled Printing Research, Inc., et al. v. Williamson Printing Corporation, et al., Civil Action No. 3-99-CV 1154-M, and for which confidential treatment is being sought pursuant to M.P.E.P. §724.05.

The party submitting such Confidential Information to the PTO shall make the appropriate request to have such information treated and maintained as confidential by the PTO pursuant to M.P.E.P. §724.05 and shall have the right to seek to expunge such material pursuant to 37 C.F.R. §1.59(b) and M.P.E.P. §724.02.

17]. Within thirty (30) days after the conclusion of this litigation, any originals or reproductions of any documents designated as Confidential Information and produced in this litigation shall be returned to the producing party. To the extent the provisions of any orders entered in this action restrict the communication and use of Confidential Information, including, but not limited to, that contained in documents, affidavits, briefs or memoranda filed with the Court, or deposition transcripts, such orders shall continue to be binding after the conclusion of this litigation, except (a) that there shall be no restriction on documents that are used as exhibits in ~~{Court (unless such exhibits were filed under seal)}~~ [open Court (unless the Court shall seal the record or that portion of the record containing exhibits or specific exhibits)] and (b) that a party may seek the written permission of the producing party or further order of the Court with respect to dissolution or modification of such orders. The Court shall retain personal jurisdiction of the parties and those who have signed acknowledgment forms hereunder for purposes of enforcement of this Order.

~~{17}~~ [18]. Nothing in this Order shall be deemed to preclude any party from seeking and obtaining, on an appropriate showing, further or additional protection with respect to documents or other information sought in discovery as that party may consider appropriate.

~~{18}~~ [19]. Notwithstanding the provisions hereof, documents or information designated for protection pursuant to this ~~{Order}~~ [Order] may be introduced into evidence[,] or otherwise disclosed at trial, hearings and other court proceedings after notice to counsel for all parties in sufficient time to permit the designating party to seek appropriate relief to preserve the confidentiality of such information. [Both parties agree and are ordered to make a good faith effort to minimize the loss of confidentiality.]

20] ~~{19}~~. In the event discovery is sought from non-parties that would require the production of documents or information which could be designated as Confidential Information, the non-parties, at their option, may so designate such material within the terms of this Order. The receiving parties agree to treat such documents and things designated as Confidential Information by non-parties according to the terms of this Order.

Signed on this \_\_\_\_ day of ~~{March}~~ [April], 2000.

\_\_\_\_\_  
United States District Judge

**APPROVED AND AGREED TO:**

\_\_\_\_\_  
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L. Dan Tucker  
Texas State Bar No. 20276500  
Robert M. Mowrey  
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ATTORNEYS FOR DEFENDANTS

FILED - 96-5760



**EXHIBIT A**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**PRINTING RESEARCH, INC.  
and HOWARD W. DEMOORE,**

**Plaintiffs,**

v.

**WILLIAMSON PRINTING  
CORPORATION. BILL L. DAVIS and  
JESSE S. WILLIAMSON,**

**Defendants.**

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**CIVIL ACTION NO. 3-99CV1154-M**

**ACKNOWLEDGMENT OF PROTECTIVE ORDER**

I, \_\_\_\_\_, an employee of \_\_\_\_\_, with the title of \_\_\_\_\_, acknowledge that I have [carefully] read the Protective Order entered in this action and agree to be bound by its terms. I [understand that Confidential Information is: (a) to be used solely for this litigation and any proceedings in the U.S. Patent and Trademark Office ("PTO") involving any of the parties; (b) shown only to Qualified Persons; (c) maintained in a manner reasonably calculated to prevent persons other than Qualified Persons from accessing or inadvertently discovering such information; and (d) returned at the conclusion of this litigation or such proceedings in the PTO pursuant to the Protective Order. I understand that any violation of the Protective Order may be punishable as contempt of Court. I] submit to the jurisdiction of this Court for the purpose of {enforcement} [enforcing my compliance with the Protective Order and, if necessary, to punish violations] of the Protective Order.

Signed this \_\_\_\_\_ day of {March} [April], 2000.

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**EXHIBIT B**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**PRINTING RESEARCH, INC.  
and HOWARD W. DEMOORE,**

**Plaintiffs,**

**v.**

**WILLIAMSON PRINTING  
CORPORATION. BILL L. DAVIS and  
JESSE S. WILLIAMSON,**

**Defendants.**

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**CIVIL ACTION NO. 3-99CV1154-M**

**ACKNOWLEDGMENT OF  
PROTECTIVE ORDER BY EXPERT OR CONSULTANT**

1. My full name is \_\_\_\_\_
2. My address is \_\_\_\_\_  
\_\_\_\_\_
3. My present employer is \_\_\_\_\_
4. My job description is \_\_\_\_\_
5. My prior regular employer {or} [was: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

TOP SECRET

6. My past or present regular employment [of, by, or] with any party to the above-entitled action [was or] is: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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{6} [7].

I also serve as an employee, agent, officer or director of the following entities:

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{7} [8].

I have received a copy of the Protective Order entered in the above-referenced case, and I have carefully read and understand the provisions of the Protective Order. I will comply with all of the provisions of the Protective Order.

{8} [9].

I will not disclose or permit access to any Confidential Information to ~~{any one}~~ [anyone] not qualified to receive that information under the Protective Order, and I will use any such information only with respect to this case [and any proceedings in the U.S. Patent and Trademark Office involving any of the parties.]

10 {10} [10].

I will return all Confidential Information that comes into my possession, and all documents or things which I have prepared relating to such information, to an attorney representing the party that has employed or retained me.

{10} [11].

I understand that any violation of the Protective Order may be punishable as contempt of Court]. I submit to the jurisdiction of this Court for the ~~{purposes of enforcement}~~ [purpose of enforcing my compliance with the Protective Order and, if necessary, to punish violations] of the Protective Order.

Signed on this \_\_\_\_ day of ~~{March}~~ [April], 2000.

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